

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
(Richmond Division)**

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In re: : **Chapter 11**
: **Case No. 08-35653**
CIRCUIT CITY STORES, INC., et al., : **Jointly Administered**
:
: **Debtors.**
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**RESPONSE OF NORTH PLAINFIELD VF LLC TO DEBTORS' SECOND
OMNIBUS MOTION FOR ORDER PURSUANT TO BANKRUPTCY CODE
SECTIONS 105(a), 365(a) AND 554 AND *BANKRUPTCY RULE* 6006
AUTHORIZING REJECTION OF CERTAIN UNEXPIRED LEASES OF
NONRESIDENTIAL REAL PROPERTY AND ABANDONMENT OF
PERSONAL PROPERTY**

North Plainfield VF LLC (the "Landlord") hereby submits this response (the
"Response") to the Debtors' Second Omnibus Motion for Order Pursuant to Bankruptcy Code
Sections 105(a), 365(a) and 554 and Bankruptcy Rule 6006 Authorizing Rejection of Certain

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Unexpired Leases of Nonresidential Real Property and Abandonment of Personal Property (the “Motion to Reject”). In support of its Response, the Landlord respectfully states as follows:

1. By their Motion to Reject, the Debtors are seeking to reject certain unexpired leases of nonresidential real property including the lease (the “Lease”) between Landlord and Circuit City Stores, Inc., dated August 23, 2006, for property (the “Premises”) located at U.S. Highway 22 and West End Avenue, North Plainfield, New Jersey, identified by the Debtors as Store No. 4133. The Landlord is not objecting to the Motion to Reject, but wants to make clear that the Debtors remain responsible for performing all of their postpetition obligations under the Lease. Such postpetition obligations of the Debtors include payment of all their postpetition rent and other charges due under the Lease, of which the Debtors have not paid any since the commencement of this case, and causing the removal of liens filed against the Premises.

2. The Landlord and Marlton VF LLC have filed the pending Motion of North Plainfield VF LLC and Marlton VF LLC to Compel the Debtors to Perform Postpetition Obligations Pursuant to 11 U.S.C. § 365(d)(3) (Docket No. 1142) (the “Motion to Compel”), which, among other things, seeks to compel the Debtors to comply with their postpetition obligations under the Lease and section 365(d)(3) of Title 11 of the United States Code (the “Bankruptcy Code”) by taking all necessary actions to remove liens filed against the Premises. The Motion to Compel is scheduled to be heard on January 16, 2009, the same day the Motion to Reject is scheduled to be heard.¹

¹ In the Motion to Compel, the Landlord stated that A.J. Maglio, Inc. (“Maglio”) had filed a lien against the Premises in the amount of \$187,498.56 on December 3, 2008. Since filing the Motion to Compel, however, the Landlord has learned that Maglio has discharged its lien. However, the Landlord was also notified that the Schimenti Construction Company LLC (“Schimenti”) filed a lien against the Premises in the amount of \$684,124.70 on January 8, 2009.

3. The Landlord hereby renews its arguments made in the Motion to Compel and requests the Court to take notice of the Motion to Compel when considering any decision on the Motion to Reject. Whether or not the Motion to Reject is granted, the Debtors are required to perform their postpetition obligations as to the Premises under section 365(d)(3) of the Bankruptcy Code. Section 365(d)(3) of the Bankruptcy Code requires the Debtors to “timely perform all the[ir] obligations . . . arising from and after the order for relief under any unexpired lease of nonresidential real property, **until such lease is assumed or rejected** . . .” 11 U.S.C. § 365(d)(3) (emphasis added). As such, rejection of the Lease should not relieve the Debtors’ obligations under the Lease through the date of rejection, including the obligations to pay their postpetition rent and to remove any liens filed against the Premises.

4. The Landlord reserves any and all applicable rights with respect to (i) any outstanding rent and other charges due under the Lease, as well as (ii) any liens on the Premises, including the right to object or otherwise contest any liens that have been or may be filed against the Premises. In addition, the Landlord reserves any and all rights to take action to remove any liens against the Premises and seek indemnification from the Debtors with respect thereto under the Lease. In the event the Debtors do not timely pay all outstanding postpetition rent and other charges due under the Lease and remove the liens against the Premises as required under the Lease, the Landlord reserves all rights under section 365(d)(3) of the Bankruptcy Code and the right to administrative expense status under section 503 of the Bankruptcy Code for any claims resulting from liens filed against the Premises.

Respectfully Submitted,

NORTH PLAINFIELD VF LLC,

By Counsel

/s/ Lisa Taylor Hudson

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of January, 2009, a true and accurate copy of the foregoing was electronically filed with Clerk of the Court for the Eastern District of Virginia, Richmond Division, using the CM/ECF system, which thereby caused the above to be served electronically on all registered users of the ECF system that have filed notices of appearance in this matter, and was mailed, by U.S. Mail, first class, postage prepaid, to all persons on the attached service list.

/s/ Lisa Taylor Hudson

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